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on the Elimination
of all Forms of
Racial Discrimination

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OF RACIAL DISCRIMINATION
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UNDER ARTICLE 9 OF THE CONVENTION

Twelfth periodic reports of States parties due in 1992

Addendum

POLAND*

[10 July 1992]

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* This report contains the tenth, eleventh and twelfth periodic reports which were due, respectively, on 5 January 1988, 5 January 1990 and 5 January 1992. For the eight and ninth periodic reports submitted by the Government of Poland and the summary records of meetings of the Committee at which those reports were considered, see the following documents:

Eight periodic report - CERD/C/118/Add.21 (CERD/C/SR.736);
Ninth periodic report - CERD/C/149/Add.20 (CERD/C/SR.836).

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PART I - GENERAL

1. The Convention on the Elimination of All Forms of Racial Discrimination was ratified by Poland in 1968 (Journal of Laws 1969, No. 25, items 187, 188).

2. Although the definition of racial discrimination as specified in article 1 of the Convention has not been incorporated into the domestic legal system, and such a definition does not exist in it, the principle of eliminating racial discrimination may be perceived as one of the policy factors striving for promotion and protection of human rights and fundamental freedoms in the political, economic, social, cultural and all other fields of public life in Poland. Moreover, this principle is anchored in the Constitution of 22 July 1952 (final text: Journal of Laws 1976, No. 7, item 36, with subsequent amendments. Article 67 of the Constitution provides that "all citizens of the Republic of Poland shall have equal rights irrespective of sex, birth, education, profession, nationality, race, religion, social origin and social status". This article is supported by article 81, paragraph 1, of the Constitution which states that "citizens of the Republic of Poland, irrespective of nationality, race or religion, shall enjoy equal rights in all fields of public, political, economic, social and cultural life; infringement of this principle by any direct or indirect preferences or restrictions of rights on account of nationality, race or religion shall be punishable".

3. According to the jurisprudence under the Constitution of 1952, the provisions of conventions and other international instruments ratified by Poland are not incorporated into the national legal system by the sole act of ratification. While defining external obligations, they are domestically perceived as general guidelines and recommendations for lawmaking. So, the norms of the international treaties cannot be applied and directly enforced by the courts and/or other judicial agencies, the only exception being ombudsmen.

4. No official statistics concerning the demographic composition of the population are available. According to State policy, a question pertaining to nationality or race should not be included in a questionnaire or a survey as they may be of a discriminatory nature. Nevertheless, for example, Ukrainians and Byelorussians (the largest national minorities) are estimated by themselves to number 100,000-800,000 (depending on the criterion used) out of a total population of approximately 38 million. The Jewish population is estimated at 10,000-12,000.

PART II - INFORMATION IN RELATION TO ARTICLES 2 TO 7 OF THE CONVENTION

Article 2

5. Criminal law instruments have been adopted in fulfilment of the provisions of the Constitution. Reference is made to articles 272-274 of the Criminal Code of 19 April 1969 (Journal of Laws 1969, No. 13, item 94, further referred to as CC).

> "Art. 272 - Whoever publicly incites to discord on the basis of national, ethnic, racial or religious differences or publicly extols such discord, shall be punished with the term of imprisonment of from 6 months up to 5 years.
>
> Art. 273 para. 1 - Whoever commits an act specified in article [...] 272 by using the press or other mass media whall be punished with the term of imprisonment of from 1 up to 10 years.
>
> para. 2 - Whoever, for the purpose of their dissemination, produces, stores, transports, transfers, or dispatches written, printed or other objects containing issues specified in art. [...] 272 above, shall be punished with the term of imprisonment of from 6 months up to 5 years.
>
> Art. 274 para. 1 - Whoever publicly insults, scoffs at or degrades a group of people or an individual person by reason of their or his/her national, ethnic or racial origin, shall be punished with the term of imprisonment not exceeding 3 years.
>
> para. 2 - Whoever commits an act of assault against a human being for a reason specified in para. 1 above, shall be punished with the term of imprisonment for 6 months up to 5 years."

In the period 1986-1990, eight persons were convicted under article 274 of the CC (1, 6, 0, 1, 0) persons per year respectively). No convictions under the other above-quoted provisions were reported.

6. According to article 20 of the CC, "the court of justice shall impose the same penalty for instigating or abetting, within the range of the sanctions specified for the offence in question".

7. It should be also emphasized that the draft criminal code, as prepared by the governmental commission, places racial offences within the group of offences against mankind, and not of those against public order.

8. Article 276, paragraph 1, of the CC prohibits membership in an association the purpose of which constitutes an offence. Since articles 272-274 of the CC (as well as adequate provisions of the Constitution) proclaim all forms of racial discrimination as an offence, it is not possible to set up legally an organization which upholds or defends racial discrimination (see also comments under article 4 below).

9. No legal act in force provides for a legal or factual separation or discrimination based in race, nationality or social origin. No legal provision establishing or consolidating racial discrimination can be adopted

because all legislation is subject to judicial review by the Constitutional Tribunal (Journal of Laws 1985, No. 22, item 98).

10. Complaints may be lodged against both legal provisions and individual, administrative decisions with the Commissioner for Civil Rights (ombudsman) on a broad basis, including their inconsistency with the universally recognized rules of community life (Journal of Laws 1987, No. 21, item 123). According to information provided by the Commissioner's office, racial discrimination of any kind would be considered as a reasonable ground for instituting the complaints procedure; however, no such cases have been reported.

11. Since racial discrimination does not exist in Poland, and moreover since the ethnic composition of the population does not seem to promote any conflicts of this type, there is no need for the State to set up organizations promoting integration of multiracial institutions and movements. However, several organizations of such a nature exist in Poland or include this aim in their statutory tasks (so-called friendship associations with the nations of Asia and Africa, e.g. Polish-Israel Society, etc.).

Article 3

12. The Government of Poland condemns racial segregation and apartheid and prohibits all practices of this nature in its territory. The provisions described in the comments on the application of article 2 of the Convention are sufficient to prevent and control, if necessary, all acts of that kind.

13. Since the apartheid policy of the Government of South Africa has been changed, Poland established diplomatic relations with the Republic of South Africa in 1991. Missions of interests were established in both countries in February 1991.

Article 4

14. All the acts referred to in paragraph (a) have been declared offences punishable by law in Poland (see comments to art. 2 above).

15. According to article 84, paragraph 3, of the Constitution, the establishment of any organization constituting an association whose purposes and activities are calculated to injure the social structure and legal order of the Republic of Poland is prohibited. Any attempt to establish such an organization is also rendered impossible by the terms of the Law on Associations (Journal of Laws 1989, No. 20, item 104).

16. According to the Law of 1989 an association is subject to registration by the Register Court which controls, inter alia, the conformity of the statute with the law (art. 16). An ordinary association, however, may be set up without this requirement (it has no legal personality in this case); however, it may be banned by the said court on the request of the supervising organ (art. 41). In both cases the association may be dissolved by the court's decision, issued on the request of the public prosecutor or the supervising organ, if it does not obey the law in its activities.

17. Establishment of a clandestine racist organization would constitute the offence specified in article 276, paragraph 1 (see para. 8 of the present report) and in article 278, paragraphs 2 to 3, of the CC:

"Art. 278 para. 1 - Anyone who forms part of an association whose existence, organization or purpose is to be kept secret from State organs, is liable to the penalty of imprisonment for the term not exceeding 3 years.

para. 2 - Anyone who organizes such an association or direct it shall incur the penalty of a term of imprisonment of from 6 months up to 5 years.

para. 3 - Anyone who performs executive functions in an association, which has been dissolved or authorization for which has been refused, shall incur the penalty of a term of imprisonment of from 6 months up to 5 years."

It should be emphasized, however, that the authorities of Poland have never known a single case of the establishment of a racist organization.

18. There are no legal provisions in force in Poland that differentiate between the legal situation, rights or duties of citizens on the basis of their racial or ethnic origins or that permit such differentiation. In view of that fact, the authorities and public institutions have no grounds for treating citizens in different ways on account of their nationality or race. Under such circumstances there has been no need to amend the legislation in connection with this problem, in accordance with the Committee's General Recommendation No. 1 of 24 February 1972.

19. The criminal law institutions which include provisions corresponding to article 4 of the Convention have been mentioned in the paragraphs above, the adequate text being quoted.

Article 5

20. The procedures before the courts and administrative organs are regulated primarily by:

(a) The Code of Civil Procedure of 17 November 1964 (Journal of Laws, No. 43, item 296, with subsequent amendments);

(b) The Code of Criminal Procedure of 19 April 1969 (Journal of Laws, No. 13, item 96, with subsequent amendments);

(c) The Code of Procedure in Cases of Misdemeanours and Administrative Contraventions of 20 May 1971 (Journal of Laws, No. 23, item 101, with subsequent amendments);

(d) The Labour Code of 26 June 1974 (Journal of Laws, No. 24, item 141, with subsequent amendments);

(e) The Code of Administrative Procedure of 14 June 1960 (uniform text: Journal of Laws 1980, No. 9, item 26, with subsequent amendments);

(f) The Law on the Supreme Administrative Court of 31 January 1980 (Journal of Laws, No. 4, item 8, with subsequent amendments);

(g) The Law on the Commissioner for Civil Rights (Ombudsman) of July 1987 (Journal of Laws, No. 21, item 123, amended).

None of these instruments differentiates between ways of treating citizens by the courts and organs of the state administration on the basis of race, nationality or colour of skin. On the contrary, the Constitution, being the foundation of the whole legal system, clearly states that citizens of the Republic of Poland shall enjoy equal rights irrespective of their race or nationality (art. 67, para. 2; see also para. 1 of the present report).

21. The Law on the System of Courts of 20 June 1985 (uniform text: Journal of Laws 1990, No. 23, item 138, with subsequent amendments) states that: "the duty of the courts is to protect the legal order and, in particular, [...] the personal, family and financial rights as well as the interests of the citizens, as granted by the law".

22. According to article 10 of the aforementioned Law, "a person who does not speak Polish has the right to bring an action before the court in his/her mother tongue and to make use, free of charge, of the help of an interpreter". In addition, the rights of aliens are further ensured by article 62 of the Code of Criminal Procedure which states that, "if the defendant has no knowledge of Polish, the decision to prosecute, the indictment and decisions that can be appealed or that bring the proceedings to an end, shall be delivered to the defendant, whether orally or in writing, together with a translation".

23. The provisions of the Criminal Code protect life, health, freedom, honour and the physical integrity of all persons. Such protection is granted without conditions of any kind and thus irrespective of national origin or race. The same applies to the relevant provisions of civil law (e.g. see chapters XXI, XXII and XXIV of the Civil Code (Journal of Laws 1964, No. 16, item 93, with subsequent amendments)).

24. The equality of political rights of all citizens is proclaimed by article 67, paragraph 2, and article 81, paragraph 1, of the Constitution, both of which have already been mentioned in connection with article 2 of the Convention.

25. The principle of non-discrimination has been particularly emphasized with regard to the right to vote. Article 95 of the Constitution states that, "every citizen who has attained the age of 18 years, irrespective of sex, national or racial origin [...] shall have the right to vote". According to article 95 of the Constitution, "every citizen who has attained the age of 18 years may be elected to the local council, and every citizen who has attained the age of 21 years may be elected to the Diet". These provisions have been repealed in the regulations for elections (since the last report these were: the Electoral Law to the Diet of 29 May 1985, Journal of Laws, No. 26, item 112; the Electoral Law to the Sejm (Lower Chamber) and Senate of 1989, Journal of Laws, No. 19, items 102 and 103; and the Electoral Law to the Senate of 10 May 1991 and to the Sejm of 3 July 1991, Journals of Laws, Nos. 58 and 59, items 246 and 252 respectively. According to article 94 of the Constitution general, equal, direct, proportional and held by secret

the Constitution general, equal, direct, proportional and held by secret ballot (e.g. arts. 4, 6, 7 and 8 of the Law of 1985 or arts. 1-3 of the Law of July 1991).

26. The provisions of Polish law do not impose any limitations on freedom of movement and freedom to choose a place to reside within the country. The Law on Population Recording and Identity Cards of 10 April 1974 (uniform text: Journal of Laws 1984, No. 32, item 174, with subsequent amendments) includes no restrictions in this respect. The only exception is the right of the Council of Ministers to introduce some limitations on the right to property, possession, residence and domicile, etc. on areas declared as particularly important for national defence (the Decree on Areas of Strategic Importance for National Defence of 6 September 1951, Journal of Laws, No. 46, item 341). The ban on changing the permanent place of residence or on frequenting specific places or circles may be also imposed as a criminal sanction or as a measure of probabion (see relevant provisions of the Criminal Code.

27. The right to leave the country and to receive a passport stems directly from the Passport Law of 29 November 1990 (Journal of Laws 1991, No. 2, item 5). The refusal or withdrawal of a passport by virtue of its provisions is subject to a judicial review by the Supreme Administrative Court. The Passport Law does not take account, in any circumstances, of nationals or racial origin.

28. A foreigner living on the territory of Poland may be expelled from the country in circumstances specified in article 5 of the Law on Aliens of 19 March 1963 (Journal of Laws, No. 15, item 77, with subsequent amendments). Those circumstances are irrelevant from the point of view of the national or ethnic origin of the person in question.

29. Basic civil rights, such as the right to contract marriage and the free choice of a spouse, the right to own property, both individually and collectively, and the right to inherit are guaranteed by the Constitution as well as by the appropriate provisions of the Civil Code and the Family and Guardianship Code (e.g. arts. 131-139 of the Civil Code and art. 1, para. 1, of the Family Code). None of those provisions are conditional upon nor make any distinction as to race, colour of skin, birth or nationality.

30. Freedom of thought, conscience and belief, freedom to hold opinions and to express them publicly, the right of peaceful assembly and freedom of association stem directly from the Constitution (e.g. arts. 82, para. 1; 83, paras. 1 and 2; 84, para. 1), and have no connection of any kind with race or nationality. The right to wages in accordance with the quality and quantity of work done stems also from the relevant provisions of the Labour Code. A concordant statement of intent by the employer and the employee is required to initiate a work relationship. The employer is obliged to provide, inter alia, safe and hygienic working conditions, to pay wages on time and in a proper way (art. 94), as well as to apply objective and equitable criteria in assessing workers and their work. It should be emphasized once again that these provisions are in no way dependent on race or nationality.

31. Economic, social and cultural rights, and particularly the right to housing, to public health protection, medical care, social security and other benefits and the right to equal participation in cultural activities, the right of association in trade unions, etc. are guaranteed by the provisions of

the Constitution (e.g. arts. 69-73). The right to education and to vocational training is guaranteed by the Law on the System of Education of 7 September 1991 (Journal of Laws, No. 95, item 425), which ensures free and public education in schools and grants the right to minorities to attend schools in their native language on the same basis.

32. Polish law impcses no limitations for national or racial reasons on access to and the use of public facilities and places such as public transportation, hotels, restaurants, cafes, theatres, parks, etc.

Articles 6 and 7

33. The above-mentioned provisions of the Criminal Code as well as the Code of Criminal Procedure (CCP) provide for adequate and satisfactory protection of the standards of the Convention. The principle of legalism, provided for in articles 255 and 257 of the CCP, means in practice that each case where there are grounds for suspicion that an offence has been committed should be examined by the public prosecutor and presented to the independent court of justice. The proceedings are generally free of charge for the victim. The victim may also claim compensation when criminal proceedings are instituted against the alleged offender.

34 Article 415 of the Civil Code states that anyone who through his own fault has caused damage to another person shall be bound to make restitution. The Treasury is responsible for damage caused by civil servants on the basis of article 417 of the Civil Code.

35. The procedure of judicial review of both administrative decisions and decisions of courts of first instance mentioned above seems to protect in an adequate way fundamental human rights and freedoms (the procedure has been presented in detail in one of the previous reports; since that time the Courts of Appeal have been established, which definitely improved that rotection)